

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LATOYA PATRICK,

Plaintiff,

OPINION

-against-

11 Civ. 3817 (MGC)

PRECISION MARBLE INC. and JOSE  
OCHOA,

Defendants.

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APPEARANCES:

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By: Martin Kanfer, Esq.

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By: Amy L. Schaefer, Esq.  
Sim R. Shapiro, Esq.  
Jennifer Warycha, Esq.

**Cedarbaum, J.**

The defendants in this negligence action seek permission to move for summary judgment on the basis that New Jersey's "verbal threshold" rule renders plaintiff Latoya Patrick ineligible to recover in tort unless she has suffered a serious injury. This argument was thoroughly briefed in defendants' June 19, 2013 Memorandum of Law and discussed at some length during the March 12, 2014 status conference. Because the relevant statutory language is clear, further treatment of the issue is unnecessary, and defendants' request is futile.

Application of the verbal threshold statute requires both that the plaintiff be a person "subject to [that] subsection" and that the defendant's vehicle be an "automobile." N.J. Stat. Ann. § 39:6A-8(a). Precision Marble's commercial tractor trailer is not an "automobile" as the statute defines that term. N.J. Stat. Ann. § 39:6A-2. Therefore, the verbal threshold rule does not apply.

The "deemer statute" upon which defendants rely, N.J. Stat. Ann. § 17:28-1.4, does not alter this conclusion. That section, which defendants rightly characterize as focusing "on the plaintiff's status," Def.'s Mem. at 9, merely designates certain victims as "subject to" the verbal threshold rule. It does not alter the substance of that rule by nullifying § 39:6A-8(a)'s defendant-focused "automobile" requirement.

Accordingly, plaintiff is not required to prove serious injury in order to proceed to trial.

SO ORDERED.

Dated: New York, New York  
April 23, 2014

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MIRIAM GOLDMAN CEDARBAUM  
United States District Judge